

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

EVERGREEN SCHOOL DISTRICT AND
SANTA CLARA COUNTY OFFICE OF
EDUCATION.

OAH CASE NO. 2014010342

ORDER DENYING REQUEST FOR
CONTINUANCE

On April 18, 2014, the parties filed a request to continue the dates in this matter on the grounds that Student was undergoing an independent educational evaluation (IEE) which would not be completed prior to the due process hearing in this case. The parties desired to delay the proceedings so that they may hold an individualized education program (IEP) team meeting following the IEE and then participate in mediation prior to a due process hearing. On April 21, 2014, the undersigned held a telephonic hearing to consider parties' request for continuance. Diane R. Foos, attorney at law, appeared on behalf of Student; Laurie E. Reynolds, attorney at law, appeared on behalf of the Evergreen School District (Evergreen); and, Rodney L. Levin, attorney at law, appeared on behalf of the Santa Clara County Office of Education (County). The hearing was recorded.

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) The Office of Administrative Hearings considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

OAH has reviewed the request for good cause and considered all relevant facts and circumstances. The request is:

☒ Denied. All prehearing conference (PHC) and hearing dates are confirmed and shall proceed as calendared, except that the PHC for April 21, 2014, is reset to commence at 1:00 p.m.

This matter was filed on January 8, 2014. OAH has set this matter for mediation three different times, all of which have been canceled by at least one of the parties. Two of the dates for mediation, March 19 and April 2, 2014, were set at the request of the parties. All parties admitted that OAH has granted the parties sufficient opportunities to participate in mediation.

With respect to the IEE and the need to complete it prior to the due process hearing, Student and Evergreen admitted that the agreement to conduct an IEE had been reached in January 2014, prior to Student filing this case. Student admitted that over the course of the last six weeks it has become clear to the parties that the IEE would not be completed in sufficient time for the parties to consider its results prior to the due process hearing. Despite this knowledge, the parties waited until the afternoon of Friday, April 18, 2014, to file a request for continuance when the PHC in this matter was set for 10:00 a.m. on Monday, April 21, 2014. Student further admitted that initially Student did not believe he needed the results of the IEE to determine whether to resolve this case through settlement, but at this time, Parent does not know what placement Parent wants for Student; therefore, Student now believes the results of the assessment are needed in order for Parent to determine what placement would be appropriate.

None of the parties have timely filed a PHC statement. OAH requires parties to file a PHC statement three business days before the PHC. The PHC statements allow the parties and the assigned administrative law judge to prepare for the hearing and resolve any pre-hearing issues that may exist. OAH has allowed parties to file their PHC statements by noon the business day prior to a PHC if the parties are working on a settlement of the matter. OAH does not require a motion for this delay, only that the parties notify OAH that they are delaying filing the PHC statements by the date the PHC statements are originally due. Here, on April 17, 2014, the parties notified OAH that they would delay filing and exchange of their PHC statements until April 18, 2014. However, the parties did not file PHC statements by noon on April 18, 2014, and instead filed the instant request to continue, which was filed after 2:30 p.m. on April 18, 2014. During the conference, the parties failed to establish good cause for their failure to file PHC statements. Student stated that the parties had been working on reaching an interim agreement and had therefore, failed to file their PHC statements.

After having heard and considered all of the parties' contentions as to the request to continue, the request is denied. All hearing dates are confirmed. The PHC, originally set for 10:00 a.m. on April 21, 2014, is continued to 1:00 p.m. on April 21, 2014, in order to allow the ALJ presiding at the PHC to prepare for it.¹

IT IS SO ORDERED.

DATE: April 21, 2014

/s/

BOB N. VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings

¹ On April 21, 2014, Evergreen filed a peremptory challenge of the ALJ assigned to this matter. That challenge was granted on the record, after which County challenged the next ALJ assigned to this matter. That challenge was also granted. The peremptory challenges will be addressed in a separate order.